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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 91**

**[Docket No.: FAA-2020-0874; Amdt. No. 91-359]**

**RIN 2120-AL49**

**Prohibition Against Certain Flights in the Tehran Flight Information Region (FIR) (OIIX)**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This action prohibits certain flight operations in the Tehran Flight Information Region (FIR) (OIIX) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. The FAA finds this action to be necessary to address hazards to persons and aircraft engaged in such flight operations due to heightened military activities and increased political tensions in the Middle East, which present an inadvertent risk to U.S. civil aviation operations due to the potential for miscalculation or misidentification. This action incorporates the flight prohibition contained in Notice to Airmen (NOTAM) KICZ A0002/20 into the Code of Federal Regulations (CFR). This action also sets forth the approval process and exemption information for this Special Federal Aviation Regulation (SFAR), consistent with other recently published flight prohibition SFARs.

**DATES:** This final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Stephen Moates, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue S.W., Washington, DC 20591; telephone 202-267-8166; email [bill.petrak@faa.gov](mailto:bill.petrak@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Executive Summary**

This action prohibits certain flight operations in the Tehran FIR (OIIX) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. This action incorporates NOTAM KICZ A0002/20 into title 14 of the CFR. Consistent with other recently published flight prohibition SFARs, this action provides information about how to seek relief from this SFAR through the approval and exemption processes, as applicable.

**II. Legal Authority and Good Cause**

A. Legal Authority

The FAA is responsible for the safety of flight in the U.S. and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. Sections 106(f) and (g) of title 49, U.S. Code (U.S.C.), subtitle I, establish the FAA Administrator's authority to issue rules on aviation safety. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air

commerce. Section 40105(b)(1)(A) requires the Administrator to exercise this authority consistently with the obligations of the U.S. Government under international agreements.

The FAA issues flight prohibition NOTAMs for airspace managed by other countries pursuant to 49 U.S.C. 40113(a), 44701(a)(5), and 46105(c). Subsection 46105(c) authorizes the FAA Administrator, when he is of the opinion that an emergency exists related to safety in air commerce and requires immediate action, to prescribe regulations and issue orders immediately to meet the emergency, with or without notice and without regard to Part A, Air Commerce and Safety, of Subtitle VII, Aviation Programs, of title 49 U.S.C. and subchapter II of chapter 5 of title 5, the Administrative Procedure Act. However, subsection 46105(c) requires the FAA Administrator to “begin a proceeding immediately about an emergency under this subsection and give preference, when practicable, to the proceeding.” Where there are continuing significant hazards to the safety of U.S. civil aviation operations in airspace managed by another country, the appropriate follow-up proceeding is a rulemaking action to issue a flight prohibition SFAR.

The FAA is promulgating this rulemaking under the authority described in 49 U.S.C. 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security. This regulation is within the scope of the FAA’s authority because it prohibits the persons described in paragraph (a) of SFAR No. 117, 14 CFR 91.1617, from conducting flight operations in the Tehran FIR (OIIX) due to the hazards to the safety of U.S. civil flight operations, as described in the preamble to this final rule.

## B. Good Cause for Immediate Adoption

Section 553(b)(3)(B) of title 5, U.S. Code, authorizes agencies to dispense with notice and comment procedures for rules when the agency for “good cause” finds those procedures are “impracticable, unnecessary, or contrary to the public interest.” Section 553(d) also authorizes agencies to forgo the delay in the effective date of the final rule for good cause found and published with the rule. In this instance, the FAA finds good cause exists to forgo notice and comment because notice and comment would be impracticable and contrary to the public interest. In addition, it is contrary to the public interest to delay the effective date of this SFAR.

The risk environment for U.S. civil aviation in airspace other countries manage with respect to safety of flight is fluid due to the risks posed by weapons capable of targeting, or otherwise negatively affecting, U.S. civil aviation, as well as other hazards to U.S. civil aviation associated with fighting, extremist or militant activity, or heightened tensions. This fluidity and the need for the FAA to rely upon classified information in assessing these risks make issuing notice and seeking comments impracticable and contrary to the public interest. With respect to the impracticability of notice and comment procedures, the potential for rapid changes in the risks to U.S. civil aviation significantly limits how far in advance of a new or amended flight prohibition the FAA can usefully assess the risk environment. Furthermore, to the extent these rules and any amendments to them are based upon classified information, the FAA is not legally permitted to share such information with the general public, who cannot meaningfully comment on information to which they are not legally allowed access.

Under these conditions, public interest considerations favor not providing notice and seeking comment for this rule. While there is a public interest in having an opportunity for the public to comment on agency action, there is a greater public interest in having the FAA’s flight

prohibitions, and any amendments thereto, reflect the agency's most current understanding of the risk environment for U.S. civil aviation. This allows the FAA to protect the safety of U.S. operators' aircraft and the lives of their passengers and crews without over-restricting U.S. operators' routing options.

The FAA has determined the incorporation into the CFR of the flight prohibition for U.S. civil aviation operations in the Tehran FIR (OIIX) contained in NOTAM KICZ A0002/20 is necessary due to safety-of-flight hazards associated with heightened military activities and increased political tensions in the Middle East. These hazards continue to present an inadvertent risk to U.S. civil aviation operations resulting from the potential for miscalculation or misidentification. This preamble further describes these hazards, which tragically resulted in the accidental shoot down by Iranian air defense forces of Ukraine International Airlines Flight 752 (PS 752) just hours after the FAA issued NOTAM KICZ A0002/20.

In addition to the reasons identified in the forgoing discussion, it is also contrary to the public interest to delay the effective date of this final rule because it makes no changes to the boundaries of an existing FAA flight prohibition for U.S. civil aviation operations. Also, delaying the effective date would not change the compliance obligations of U.S. operators and airmen, who are already prohibited from operating in the Tehran FIR (OIIX) by NOTAM KICZ A0002/20.

Accordingly, the FAA finds good cause to forgo notice and comment and any delay in the effective date for this rule.

### **III. Background**

Between April 2007 and January 2020, the FAA had flight advisory NOTAMs in place for the Tehran FIR (OIIX) due to Iranian military capabilities; various military activities

occurring in, emanating from, or transiting the Tehran FIR (OIIX); and difficulties associated with de-conflicting those activities with civil air traffic. In addition, Iran had publicly threatened U.S. military operations in the region and possessed a wide variety of anti-aircraft-capable weapons, including surface-to-air missile systems (SAMs), man-portable air defense systems (MANPADS) and fighter aircraft capable of conducting aircraft interception operations. Some anti-aircraft-capable weapons had ranges encompassing key international air routes over the Persian Gulf and the Gulf of Oman. In early 2019, Iran conducted a military exercise in the region, demonstrating their unmanned aircraft system (UAS) capabilities. The FAA also determined Iran could increase its use of Global Positioning System (GPS) jammers and other communication jamming capabilities, which might affect U.S. civil aviation operating in the Tehran FIR (OIIX) and in overwater airspace over the Persian Gulf and the Gulf of Oman.

After the United States withdrew from the Joint Comprehensive Plan for Action (hereinafter, the “Iran Nuclear Agreement”) in May 2018 and designated Iran’s Islamic Revolutionary Guard Corps (IRGC) as a Foreign Terrorist Organization (FTO) in April 2019, Iran began posturing military capabilities on its southern coast to project strength and influence in the Persian Gulf and Gulf of Oman region. Additionally, the United States assessed Iran to have been responsible for sabotage attacks on multiple merchant vessels in the region in May 2019. On June 19, 2019, IRGC elements shot down a U.S. military Global Hawk unmanned aircraft operating in airspace over the Gulf of Oman with a SAM system. The successful intercept of the unmanned aircraft followed a June 13, 2019, failed intercept attempt of a U.S.-operated unmanned aircraft conducting observation of damaged oil tankers in the Gulf of Oman.

Although Iran likely had no intention to target civil aircraft, the FAA determined the presence and demonstrated use of long-range, advanced anti-aircraft-capable weapons during

heightened tensions and in close proximity to heavily flown international air routes posed an unacceptable level of risk to U.S. civil flights in the overwater portions of the Tehran FIR (OIIX) above the Persian Gulf and the Gulf of Oman. Iran possessed and continues to possess a wide variety of anti-aircraft-capable weapons, including SAMs, MANPADs, and fighter aircraft capable of conducting aircraft interception operations. Some of Iran's anti-aircraft-capable weapons have ranges encompassing certain heavily flown international air routes over the Persian Gulf and the Gulf of Oman. The FAA was concerned Iranian air defense forces might inadvertently engage a civil aircraft due to miscalculation or misidentification.

In response to this unacceptable level of inadvertent risk to U.S. civil aviation, the FAA issued NOTAM KICZ A0019/19 on June 21, 2019, UTC, to prohibit operations in the overwater area of the Tehran FIR (OIIX) above the Persian Gulf and Gulf of Oman by: all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier.

#### **IV. Discussion of the Final Rule**

After issuing NOTAM KICZ A0019/19, the FAA continued to monitor regional tensions closely as they further escalated. Iran continued its elevated military posturing on its southern coast, projecting air defense coverage beyond the boundaries of the Tehran FIR (OIIX). In mid-September 2019, the United States assessed Iranian forces to have been responsible for conducting a complex attack using UAS and missiles to target Saudi Aramco's energy infrastructure. In late-December 2019, Iranian-backed Shia militia groups conducted a rocket attack targeting U.S. forces located at a coalition base near Kirkuk, Iraq, resulting in casualties

and precipitating U.S. retaliatory airstrikes on Shia militia-associated facilities in Iraq and Syria. This series of events further heightened regional tensions.

On January 2, 2020, UTC, U.S. forces conducted an airstrike near Baghdad International Airport (ORBI) in Iraq, which killed IRGC Quds Force commander Qassem Soleimani. In a televised address, Iranian Supreme Leader Ali Khamenei stated Iran would engage in “harsh retaliation” for Soleimani’s death. On January 7, 2020, UTC Iran conducted retaliatory ballistic missile strikes targeting U.S. air bases in Iraq. Due to the heightened military activities, including heightened alert status of Iranian military forces, including Iranian air defense forces, and increased political tensions in the Middle East, including the potential for further escalation, the FAA determined an unacceptable risk to U.S. civil aviation existed in the Baghdad FIR (ORBB), the Tehran FIR (OIIX), and the overwater areas of the Persian Gulf and the Gulf of Oman due to the potential for miscalculation or misidentification.

To address these immediate safety-of-flight hazards, on January 7, 2020, UTC, the FAA issued KICZ NOTAMs A0001/20, A0002/20, and A0003/20, which prohibited civil flight operations in the Baghdad FIR (ORBB), the Tehran FIR (OIIX), and the overwater airspace above the Persian Gulf and the Gulf of Oman, respectively, by: all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. This rulemaking action is limited in scope to the Tehran FIR (OIIX).

Tragically, within hours after the FAA issued NOTAM KICZ A0002/20, Iranian air defense forces accidentally shot down Ukraine International Airlines Flight 752 (PS 752), shortly after its departure from Tehran Imam Khomeini International Airport (OIIE). These forces



apparently misidentified the aircraft, which was conducting a regularly scheduled passenger flight, as a missile threat. There were no survivors out of the 176 passengers and crew.

The FAA is also concerned about the wide array of military activities occurring in, emanating from, or transiting the Tehran FIR (OIIX), in an environment of heightened regional tensions. There is the potential for Iranian ballistic missile fire from western Iran targeting Islamic State of Iraq and ash-Sham (ISIS) and Kurdish opposition groups located in the region, as occurred in September 2018 and June 2017. Since 2017, Iran has also conducted multiple ballistic missile test launches in the Tehran FIR (OIIX), with the latest medium-range ballistic missile launch taking place in late December 2019. To the FAA's knowledge, Iran did not issue a NOTAM or other aeronautical information to warn civil aircraft operators of the potential hazard to their operations prior to the missile launch. Additionally, a potential inadvertent risk to U.S. civil aviation operations in the Tehran FIR (OIIX) from Iranian-fielded GPS and communication jammers continues to exist. These circumstances further contribute to the unacceptable risk environment for U.S. civil aviation in the Tehran FIR (OIIX).

Codifying the flight prohibition pursuant to this final rule is critical for U.S. civil aviation safety, given the uncertainty about how long the above-described hazards to civil aviation will persist; whether Iran will be transparent in its investigation into the downing of PS 752; and whether Iran will implement changes in its air defense command and control procedures, airspace de-confliction processes, and rules of engagement for air defense engagements to prevent further tragedies sufficient to allow for safe U.S. civil aviation operations in the Tehran FIR (OIIX). As a result, this new SFAR incorporates the flight prohibition contained in the NOTAM KICZ A0002/20 into the CFR.

The FAA will continue to monitor the situation and evaluate the extent to which U.S. civil operators and airmen might be able to operate safely in the Tehran FIR (OIIX).

Amendments to SFAR No. 117, § 91.1617, could be appropriate if the risk to aviation safety and security changes. The FAA may amend or rescind SFAR No. 117, § 91.1617, as necessary, prior to its expiration date.

The FAA also is publishing the details concerning the approval and exemption processes in Sections V and VI of this preamble to enable interested persons to refer to this final rule for all relevant information about seeking relief from SFAR No. 117, § 91.1617.

## **V. Approval Process Based on a Request from a Department, Agency, or Instrumentality of the United States Government**

### **A. Approval Process Based on an Authorization Request from a Department, Agency, or Instrumentality of the United States Government**

In some instances, U.S. Government departments, agencies, or instrumentalities may need to engage U.S. civil aviation to support their activities in the Tehran FIR (OIIX). If a department, agency, or instrumentality of the U.S. Government determines it has a critical need to engage any person described in SFAR No. 117, § 91.1617, including a U.S. air carrier or commercial operator, to conduct a charter to transport civilian or military passengers or cargo or other operations in the Tehran FIR (OIIX), that department, agency, or instrumentality may request the FAA to approve persons described in SFAR No. 117, § 91.1617, to conduct such operations.

The requesting department, agency, or instrumentality of the U.S. Government must submit the request for approval to the FAA's Associate Administrator for Aviation Safety in a

letter signed by an appropriate senior official of the requesting department, agency, or instrumentality.<sup>1</sup> The FAA will not accept or consider requests for approval from anyone other than the requesting department, agency, or instrumentality. In addition, the senior official signing the letter requesting FAA approval on behalf of the requesting department, agency, or instrumentality must be sufficiently positioned within the organization to demonstrate the senior leadership of the requesting department, agency, or instrumentality supports the request for approval and is committed to taking all necessary steps to minimize operational risks to the proposed flights. The senior official must also be in a position to: (1) attest to the accuracy of all representations made to the FAA in the request for approval, and (2) ensure any support from the requesting U.S. Government department, agency, or instrumentality described in the request for approval is in fact brought to bear and is maintained over time. Unless justified by exigent circumstances, requests for approval must be submitted to the FAA no less than 30 calendar days before the date on which the requesting department, agency, or instrumentality wishes the proposed operation(s) to commence.

The requestor must send the request to the Associate Administrator for Aviation Safety, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591. Electronic submissions are acceptable, and the requesting entity may request the FAA notify it electronically as to whether the approval request is granted. If a requestor wishes to make an electronic submission to the FAA, the requestor should contact the Air Transportation Division, Flight Standards Service, at (202) 267-8166, to obtain the appropriate email address. A single

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<sup>1</sup> This approval procedure applies to U.S. Government departments, agencies, or instrumentalities; it does not apply to the public. The FAA describes this procedure in the interest of providing transparency with respect to the FAA's process for interacting with U.S. Government departments, agencies, or instrumentalities that seek to engage U.S. civil aviation to operate within the area in which this SFAR prohibits their operations.

letter may request approval from the FAA for multiple persons described in SFAR No. 117, § 91.1617, or for multiple flight operations. To the extent known, the letter must identify the person(s) expected to be covered under the SFAR on whose behalf the U.S. Government department, agency, or instrumentality is seeking FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service to be provided by the person(s) covered by the SFAR;
- To the extent known, the specific locations in the Tehran FIR (OIIX) where the proposed operation(s) will be conducted, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the Tehran FIR (OIIX) and the airports, airfields, or landing zones at which the aircraft will take-off and land; and
- The method by which the department, agency, or instrumentality will provide, or how the operator will otherwise obtain, current threat information and an explanation of how the operator will integrate this information into all phases of the proposed operations (i.e., pre-mission planning and briefing, in-flight, and post-flight phases).

The request for approval must also include a list of operators with whom the U.S. Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) (or its prime contractor has a subcontract(s)) for specific flight operations in the Tehran FIR (OIIX). Additional operators may be identified to the FAA at any time after the FAA approval is issued. Both the operators listed in the original request and any operators that the requestor subsequently seeks to add to the approval must be identified to the FAA, and obtain an Operations Specification (OpSpec) or Letter of Authorization (LOA) from the FAA, as appropriate, for operations in the Tehran FIR (OIIX), before such operators commence operations. The approval conditions discussed below apply to

all operators, whether included in the original list or subsequently added to the approval.

Updated lists should be sent to the email address to be obtained from the Air Transportation Division by calling (202) 267-8166.

If an approval request includes classified information, requestors may contact Aviation Safety Inspector Stephen Moates for instructions on submitting it to the FAA. His contact information is listed in the FOR FURTHER INFORMATION CONTACT section of this final rule.

FAA approval of an operation under SFAR No. 117, § 91.1617, does not relieve persons subject to this SFAR of their responsibility to comply with all other applicable FAA rules and regulations. Operators of civil aircraft must comply with the conditions of their certificate, OpSpecs, and LOAs, as applicable. Operators must also comply with all rules and regulations of other U.S. Government departments or agencies that may apply to the proposed operation(s), including, but not limited to, regulations issued by the Transportation Security Administration.

#### B. Approval Conditions

If the FAA approves the request, the FAA's Aviation Safety organization will send an approval letter to the requesting department, agency, or instrumentality informing it that the FAA's approval is subject to all of the following conditions:

(1) The approval will stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator, while still allowing the operator to achieve its operational objectives.

(2) Before any approval takes effect, the operator must submit to the FAA:

(a) A written release of the U.S. Government from all damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the Tehran FIR (OIIX); and

(b) The operator's written agreement to indemnify the U.S. Government with respect to any and all third-party damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising from or related to the approved operations in the Tehran FIR (OIIX).

(3) Other conditions the FAA may specify, including those that may be imposed in OpSpecs or LOAs, as applicable.

The release and agreement to indemnify do not preclude an operator from raising a claim under an applicable non-premium war risk insurance policy issued by the FAA under chapter 443 of title 49, U.S. Code.

If the FAA approves the proposed operation(s), the FAA will issue an OpSpec or LOA, as applicable, to the operator(s) identified in the original request authorizing them to conduct the approved operation(s), and will notify the department, agency, or instrumentality that requested the FAA's approval of any additional conditions beyond those contained in the approval letter.

## **VI. Information Regarding Petitions for Exemption**

Any operations not conducted under an approval issued by the FAA through the approval process set forth previously must be conducted under an exemption from SFAR No. 117, § 91.1617. A petition for exemption must comply with 14 CFR part 11. The FAA will consider whether exceptional circumstances exist beyond those contemplated by the approval process described in the previous section. To determine whether a petition for exemption from the

prohibition this SFAR establishes fulfills the standard of 14 CFR 11.81, the FAA consistently finds necessary the following information:

- The proposed operation(s), including the nature of the operation;
- The service to be provided by the person(s) covered by the SFAR;
- The specific locations in the Tehran FIR (OIIX) where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the Tehran FIR (OIIX) and the airports, airfields and/or landing zones at which the aircraft will take-off and land;
- The method by which the operator will obtain current threat information and an explanation of how the operator will integrate this information into all phases of its proposed operations (i.e., the pre-mission planning and briefing, in-flight, and post-flight phases); and
- The plans and procedures the operator will use to minimize the risks, identified in this preamble, to the proposed operations, so that granting the exemption would not adversely affect safety or would provide a level of safety at least equal to that provided by this SFAR. The FAA has found comprehensive, organized plans and procedures of this nature to be helpful in facilitating the agency's safety evaluation of petitions for exemption from flight prohibition SFARs.

The FAA includes, as a condition of each such exemption it issues, a release and agreement to indemnify, as described previously.

The FAA recognizes that, with the support of the U.S. Government, the governments of other countries may plan operations that SFAR No. 117, § 91.1617, affects. While the FAA will

not permit these operations through the approval process, the FAA will consider exemption requests for such operations on an expedited basis and prior to other exemption requests.

If a petition for exemption includes security-sensitive or proprietary information, requestors may contact Aviation Safety Inspector Stephen Moates for instructions on submitting it to the FAA. His contact information is listed in the FOR FURTHER INFORMATION CONTACT section of this final rule.

## **VII. Regulatory Notices and Analyses**

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), as codified in 5 U.S.C. 603 et seq., requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96-39), as codified in 19 U.S.C. Chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), as codified in 2 U.S.C. Chapter 25, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.



In conducting these analyses, the FAA has determined this final rule has benefits that justify its costs. This rule is a significant regulatory action, as defined in section 3(f) of Executive Order 12866, as it raises novel policy issues contemplated under that Executive Order. This rule also complies with the requirements of the Department of Transportation's administrative rule on rulemaking at 49 CFR part 5. As notice and comment under 5 U.S.C. 553 are not required for this final rule, the regulatory flexibility analyses described in 5 U.S.C. 603 and 604 regarding impacts on small entities are not required. This rule will not create unnecessary obstacles to the foreign commerce of the United States. This rule will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector, by exceeding the threshold identified previously.

#### A. Regulatory Evaluation

This rule prohibits U.S. civil flights in the Tehran FIR (OIIX) by incorporating the flight prohibition contained in NOTAM KICZ A0002/20 into the CFR as a result of the significant risks to U.S. civil aviation detailed in the preamble of this final rule. U.S. Government departments, agencies, and instrumentalities may take advantage of the approval process on behalf of U.S. operators and airmen with whom they have a contract, grant, or cooperative agreement, or with whom their prime contractor has a subcontract. U.S. operators and airmen whose operations in the Tehran FIR (OIIX) are not conducted under any of the foregoing types of arrangements with the U.S. Government may petition for exemption from this rule.

The FAA acknowledges this flight prohibition may result in additional costs to some U.S. operators, such as increased fuel costs and other operational-related costs. However, the FAA expects the benefits of this action exceed the costs because it will result in the avoidance of risks of fatalities, injuries, and property damage that could result from a U.S. operator's aircraft being

shot down (or otherwise damaged) while operating in the Tehran FIR (OIIX). The FAA will continue to monitor the situation actively.

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever an agency is required by 5 U.S.C. 553, or any other law, to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553, after being required by that section or any other law to publish a general notice of proposed rulemaking. The FAA found good cause to forgo notice and comment and any delay in the effective date for this rule. As notice and comment under 5 U.S.C. 553 are not required in this situation, the regulatory flexibility analyses described in 5 U.S.C. 603 and 604 are not required.

#### C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39) prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from risks to aircraft operations in the

Tehran FIR (OIIX), a location outside the U.S. Therefore, this final rule is in compliance with the Trade Agreements Act of 1979.

#### D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155 million in lieu of \$100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

#### E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

#### F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, the FAA’s policy is to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to this regulation. The FAA finds that this action is fully consistent with the obligations under

49 U.S.C. 40105(b)(1)(A) to ensure that the FAA exercises its duties consistently with the obligations of the United States under international agreements.

While the FAA's flight prohibition does not apply to foreign air carriers, DOT codeshare authorizations prohibit foreign air carriers from carrying a U.S. codeshare partner's code on a flight segment that operates in airspace for which the FAA has issued a flight prohibition. In addition, foreign air carriers and other foreign operators may choose to avoid, or be advised or directed by their civil aviation authorities to avoid, airspace for which the FAA has issued a flight prohibition.

#### G. Environmental Analysis

The FAA has analyzed this action under Executive Order 12114, Environmental Effects Abroad of Major Federal Actions (44 FR 1957, January 4, 1979), and DOT Order 5610.1C, Paragraph 16. Executive Order 12114 requires the FAA to be informed of environmental considerations and take those considerations into account when making decisions on major Federal actions that could have environmental impacts anywhere beyond the borders of the United States. The FAA has determined that this action is exempt pursuant to Section 2-5(a)(i) of Executive Order 12114 because it does not have the potential for a significant effect on the environment outside the United States.

In accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 8-6(c), FAA has prepared a memorandum for the record stating the reason(s) for this determination and has placed it in the docket for this rulemaking.

## **VIII. Executive Order Determinations**

### **A. Executive Order 13132, Federalism**

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

### **B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use**

The FAA analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. The agency has determined that it would not be a “significant energy action” under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

### **C. Executive Order 13609, Promoting International Regulatory Cooperation**

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

#### D. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This rule is not subject to the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, because it is issued with respect to a national security function of the United States.

### **IX. Additional Information**

#### A. Availability of Rulemaking Documents

An electronic copy of a rulemaking document may be obtained from the Internet by—

- Searching the docket for this rulemaking at <https://www.regulations.gov>;
- Visiting the FAA's Regulations and Policies web page at [https://www.faa.gov/regulations\\_policies](https://www.faa.gov/regulations_policies); or
- Accessing the Government Publishing Office's website at <https://www.govinfo.gov>

Copies may also be obtained by sending a request (identified by amendment or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677.

Except for classified material, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the Internet through the docket for this rulemaking.

#### B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104-121) (set forth as a note to 5 U.S.C. 601) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the persons listed under the FOR FURTHER INFORMATION CONTACT heading at the beginning

of the preamble. To find out more about SBREFA on the Internet, visit  
[http://www.faa.gov/regulations\\_policies/rulemaking/sbre\\_act/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

### **List of Subjects in 14 CFR Part 91**

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Iran.

### **The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

### **PART 91—GENERAL OPERATING AND FLIGHT RULES**

1. The authority citation for part 91 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114-190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

2. Add § 91.1617 to subpart M of part 91 to read as follows:

### **§ 91.1617 Special Federal Aviation Regulation No. 117—Prohibition Against Certain Flights in the Tehran Flight Information Region (FIR) (OIIIX).**

(a) *Applicability.* This Special Federal Aviation Regulation (SFAR) applies to the following persons:

- (1) All U.S. air carriers and U.S. commercial operators;
- (2) All persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and
- (3) All operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier.

(b) *Flight prohibition.* Except as provided in paragraphs (c) and (d) of this section, no person described in paragraph (a) of this section may conduct flight operations in the Tehran Flight Information Region (FIR) (OIIX).

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations in the Tehran FIR (OIIX), provided that such flight operations are conducted under a contract, grant, or cooperative agreement with a department, agency, or instrumentality of the U.S. Government (or under a subcontract between the prime contractor of the department, agency, or instrumentality and the person described in paragraph (a) of this section) with the approval of the FAA, or under an exemption issued by the FAA. The FAA will consider requests for approval or exemption in a timely manner, with the order of preference being: first, for those operations in support of U.S. Government-sponsored activities; second, for those operations in support of government-sponsored activities of a foreign country with the support of a U.S. Government department, agency, or instrumentality; and third, for all other operations.

(d) *Emergency situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this section to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 CFR parts 119, 121, 125, or 135, each person who deviates from this section must, within 10 days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the responsible Flight Standards Office a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons for it.



(e) *Expiration.* This SFAR will remain in effect until October 31, 2022. The FAA may amend, rescind, or extend this SFAR, as necessary.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), on October 19, 2020.

Steve Dickson,

Administrator.

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